

city (Mr. Thomas) argued this point upon that question.

Mr. STIRLING. That argument was made upon another question which embraced it. The other question was whether the legislature should provide compensation for emancipated slaves. That necessarily involved the question of the right of property; but this does not.

Mr. MILLER. Upon that question the gentleman from Baltimore city (Mr. Thomas) was allowed to make his argument upon slavery.

Mr. THOMAS. My argument was only in reply to the argument of the gentleman from Anne Arundel (Mr. Miller) yesterday morning.

The CHAIRMAN (Mr. Hollyday.) As the argument has been allowed this latitude, the gentleman has a right to proceed.

Mr. MILLER resumed: "Judge Blackstone in his commentaries in 1775, 11th edition, vol. 1, p. 127, says, that a slave or negro the moment he lands in England falls under the protection of the laws, and so far becomes a freeman; though the master's right to his service may probably still continue. And in page 424, repeats the same, and adds, that the law will protect him in the enjoyment of his person and property; but yet with regard to any right which the master may lawfully have acquired to the perpetual service of John or Thomas, this will remain in exactly the same state as before; for this is no more than the same subjection for life, which every apprentice submits to for the space of seven years or more, &c.

"In the British books, slaves are sometimes called slaves or servants; and it is said by Lord Mansfield in *Somerset's case*, that there may be a villein in gross by confession. In the case of *Somerset* in 1772, Lord Mansfield mentioned the opinions of Sir Philip Yorke, and Lord Chief Justice Talbot, in 1729, and recognized by Lord Hardwicke in 1749, and calls them two of the greatest men of their own or any times, and says he pays all due attention to their opinions. Lord Mansfield puts several questions as to the law with respect to their settlements, their wages, actions for any slight coercion by their masters. In *Somerset's case* the court declined deciding the question, whether by being carried to England he thereby became free; but say, that they would judge upon the return of the *habeas corpus*, and according to their own laws, which did not admit of so high an act of dominion as in that case had been exercised by the master over his slave, and therefore that *Somerset* must be discharged. Lord Mansfield in *Somerset's case* says, that the state of slavery is so odious that nothing can be suffered to support it but positive law.

"In this collision of individual opinions, and opposing decisions in the British books,

this court will not say what would have been the decision of a British tribunal upon the question stated in the exception."

So that the court have not decided that by the common law of England slavery did not exist.

Mr. THOMAS. No; they dodged that question; but Judge Chase decided that in the general court, and they did not overrule that.

Mr. MILLER. This is the decision of the Court of Appeals upon the exceptions taken in the court below. After consideration of the decision given in the court below, the Court of Appeals reversed it.

"And acting as a court of an independent country, unfettered by any political stipulations on subjects of this nature, and bound to decide according to the laws of this State, they do not consider themselves at liberty to adopt an opinion that might possibly prevail in a foreign tribunal."

The instructions given to the court below which this court reversed were these:

"That if from the evidence in this cause they are of the opinion that a woman called Joice, the ancestor of the petitioner, was a negro woman carried with her owner, claiming her as a slave, from the island of Barbadoes to England, and afterwards brought into this country by Lord Baltimore, claiming her as a slave, between the years 1678 and 1681, and that she, during her life was held, used and treated as a slave, and that her issue have been held as slaves ever since, that then they must find a verdict for the defendant."

Mr. BARRON (interposing.) One word for information. We have got nothing to do with what was done in those days. The question with us is whether we shall now be a free or a slave State.

Mr. MILLER. That question has been decided by this convention. The court below, as I was saying, had instructed the jury upon that state of facts, that the petitioner was entitled to freedom; and the Court of Appeals reversed it. The Court of Appeals says:

"This case being brought before the court by original proceeding, we are of opinion that it must be governed by the law of this State; and that in this case, however the laws of Great Britain in such instances operating upon such persons there, might interpose so as to prevent the exercise of certain acts by the master, not permitted, as in the case of *Somerset*; yet upon the bringing Ann Joice into this State, then the province of Maryland, the relation of master and slave continued in its extent as authorized by the laws of this State; and therefore that the judgment of the general court must be reversed."

Mr. THOMAS. Will the gentleman allow me to ask whether the Court of Appeals in that decision did not entirely exclude the common law, and decide the case according to the act of Maryland of 1715?